

REMARKS

Applicants amend independent claims 1 and 6. Claims 1-4 and 6 are currently pending, of which claims 1 and 6 are independent. No new matter has been introduced. Support for the claim amendments to claims 1 and 6 can be found in Applicants' Figures 1, 2 and 3 and the portions of the Specification related thereto. Applicants respectfully submit that the pending claims are in condition for allowance.

I. Telephone Interview with the Examiner

Applicants note with appreciation the telephone interview conducted with the Examiner on March 3, 2008. The topics of the interview focused on the 35 U.S.C. §112, 1st paragraph rejection of claims 1-4 and 6 and focused on the 35 U.S.C. §103(a) rejections of claims 1 and 6 in view of United States Patent Number 5,464,700 to Steck *et al.* (hereafter "Steck").

More specifically, the discussion clarified where in the instant application support for the subject matter of the amendment to claims 1 and 6 filed on October 25, 2007, can be found.

Further, the discussion, in turn, focused on the subject matter of the claimed invention and the subject matter taught by Steck reference were discussed. The Examiner appeared to indicate that further clarification of the recited seal member as illustrated in Figures 1 and 3 may overcome the rejection based the Steck reference.

II. Claim Amendments

In view of the interview with the Examiner, Applicants amend independent claims 1 and 6 to further clarify the structure of the recited seal member. More specifically, claims 1 and 6 are amended to further define each respectively recited seal member as including a main seal with an outer boundary wholly interposed between and contacting the first metal separator and the electrolyte to distinguish each claimed invention from the Steck reference.

Applicants contend that the above claim amendments address the issues raised by the Examiner in the Office Action dated December 5, 2008 and during the interview with respect to Steck and thus, claims 1-4 and 6 are patentably distinct from the Steck reference.

III. Rejection of Claims 1-4 and 6 under 35 U.S.C. §112, 1st paragraph

Claims 1-4 and 6 stand rejected under 35 U.S.C. §112, 1st paragraph as failing to comply with the written description requirement. Applicants respectfully traverse this rejection in view of the discussion with the Examiner on March 3, 2008 and the following arguments.

The Office Action mailed December 05, 2007 states the limitation “wholly” is new matter. Applicants respectfully disagree. Further, the Office Action mailed December 05, 2007 states that in accordance with Figure 3, the outer peripheral portion of seal 60 is present in areas that are not “wholly” interposed the metal separator and the electrolyte, such as around the peripheries of manifold openings 30a and 30b. Applicants respectfully disagree with the interpretation of the limitation “wholly” as detailed in the Office Action mailed December 05, 2007.

Applicants respectfully contend that Figures 1, 2, and pages 10 and 11 of the Specification provide support and clarification for the term “wholly” as recited in claims 1 and 6. As shown and described, the seal member 60 includes a main seal 62 interposed between the solid polymer electrolyte membrane 36 and the flat surface 14c of the first metal separator 14, corresponding to a position of the outer marginal region 45 of the gas diffusion layer 42a of the anode 38. The main seal 62 is formed around an outer region of the solid polymer electrolyte membrane 36, the oxygen-containing gas supply passage 30a, and the oxygen-containing gas discharge passage 30b. As depicted in Figure 1, electrolyte 36 like the metal separator 14, both include the oxygen-containing gas supply passage 30a and the oxygen-containing gas discharge passage 30b. Therefore, the seal indeed has a main seal with an outer boundary portion wholly interposed between and contacting said first metal separator and said electrolyte, even at extended locations such as, around the manifold openings 30a and 30b.

In view of the foregoing arguments, Applicants respectfully submit that the subject matter of claims 1-4 and 6 complies with 35 U.S.C. §112, 1st paragraph.

Applicants respectfully request the Examiner to reconsider and withdraw the rejections of claims 1-4 and 6 under 35 U.S.C. §112, 1st paragraph.

IV. Rejection of Claims 1, 2 and 6 under 35 U.S.C. §103

Claims 1, 2 and 6 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Steck. Applicants respectfully traverse this rejection in view of the above amendments and the following arguments.

Claim 2 depends upon independent claim 1, and therefore, incorporates the patentable features of claim 1.

Applicants respectfully submit that the Steck reference does not disclose, teach or suggest at least the following feature of amended independent claims 1 and 6: “a seal member having *a main seal with an outer boundary wholly interposed* between and contacting said first metal separator and said electrolyte, and an inner portion interposed between and contacting the first metal separator and a planar portion of the other gas diffusion layer.”

The Steck reference teaches a fuel cell system that provides a seal between the electrically conductive separator plates. For example, the outer boundary of gasket layer 12 is interposed between the separator plates 22, 24 or alternatively, the outer boundary of gasket layer 12 is interposed between the separator plate 22 and the anode 18. *See*, Figure 6 of the Steck reference. Nonetheless, the Steck reference does not disclose, teach or suggest that the gasket 12 includes *a main seal with an outer boundary wholly interposed* between and contacting the first metal separator and the electrolyte. In contrast, Applicants claims 1 and 6 each recite, amongst other features, a seal member having *a main seal with an outer boundary wholly interposed* between and contacting said first metal separator and said electrolyte. Hence, the Steck reference fails to teach or suggest each and every element of claims 1 and 6.

In view of the foregoing amendments and arguments, Applicants respectfully submit that the Steck reference fails to establish a *prima facie case* of obviousness with which to reject claims 1, 2 and 6. As such, Applicants respectfully submit that claims 1, 2 and 6 define over the art of record.

Applicants respectfully request the Examiner to reconsider and withdraw the rejections of claims 1, 2 and 6 under 35 U.S.C. §103(a).

V. Rejection of Claims 3 and 4 under 35 U.S.C. §103

Claims 3 and 4 are rejected under 35 U.S.C. §103(a) as being unpatentable over the Steck reference in view of United States Patent Publication Number 2002/0119358 to Rock (hereafter “Rock”). Applicants respectfully traverse this rejection in view of the foregoing amendments and the following arguments.

Claims 3 and 4 depend, directly or indirectly, upon independent claim 1, and therefore, incorporate the patentable features of claim 1.

Applicants respectfully submit that the Steck and Rock references, alone or in any combination, fail to teach or suggest at least the following feature of amended independent claim 1: “a seal member having *a main seal with an outer boundary wholly interposed* between and contacting said first metal separator and said electrolyte, and an inner portion interposed between and contacting the first metal separator and a planar portion of the other gas diffusion layer.”

The Rock reference teaches a fuel cell system that has seal members in contact with a membrane of an MEA and a bipolar plate. *See* Rock, Figures 10-14. For example, seal 108 and seal 105 are in contact with the membrane of MEA 106 and bipolar plate 104 or bipolar plate 110. However, the Rock reference does not teach or suggest that the seal is in contact with a gas diffusion layer. In contrast, Applicants’ claim 1 recites a seal member having an inner portion interposed between and contacting the first metal separator and *a planar portion of the other gas diffusion layer*. Hence, the Rock reference fails to bridge the factual deficiencies of the Steck reference.

In view of the foregoing arguments, Applicants respectfully submit that the Steck and Rock references, alone or in any combination, fail to teach or suggest each and every feature of claims 3 and 4. As such, Applicants respectfully submit that claims 3 and 4 define over the art of record.

Applicants respectfully request the Examiner to reconsider and withdraw the rejections of claims 3 and 4 under 35 U.S.C. §103(a).

CONCLUSION

In view of the foregoing amendments and arguments, Applicants believe the pending application is in condition for allowance.

Any fee due is authorized to be charged to our Deposit Account No. 12-0080, under Order No. TOW-041RCE2 from which the undersigned is authorized to draw. If the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely.

Dated: April 4, 2008

Respectfully submitted,

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